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CANADIAN

COMMISSION

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COMMISSION

TRANSPORTS

COMMITTEE

COMITÉ

RAILWAY

PAR CHEMIN DE FER

CASE/CAUSE NO:

VOLUME NO: 2

PLACE/ENDROIT: WINDSOR, ONT.

DATE: NOV. 29/77

OFFICIAL REPORTERS

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CANADIAN TRANSPORT COMMISSION

RAILWAY TRANSPORT COMMITTEE

IN THE MATTER OF an Application of Canadian Pacific Limited dated at Toronto, the 15th day of April, 1977 and captioned as follows:

IN THE MATTER OF The Railway Act, R.S.C. 1956 c.R-2 as amended, Sections 196, 197 and 216, The National Transportation Act, R.S.C. 1970 c.N-17 as amended, Sections 52, 57 and 63 and General Rules of Canadian Transport Commission, Rules 200, 250, 260, 275, 305 and 770;

AND IN THE MATTER OF a pedestrian crossing at Mileage 109.30 of the Windsor Subdivision of Canadian Pacific Limited as shown on Plan and Profile No. G-1-114-A, dated April 14, 1975;

AND IN THE MATTER OF the opening for the carriage of traffic of a portion of the railway between Mileage 108.35 and 109.68 of the said Windsor Subdivision known as the Powell Sidings.

File No. 49787.

Hearing held in the Cleary Auditorium
201 Riverside Drive West, Windsor,
Ontario, Tuesday, November 29th, 1977
at 10:00 a.m., Local Time.

B E F O R E:

J.T. GRAY, ESQ., Q.C.

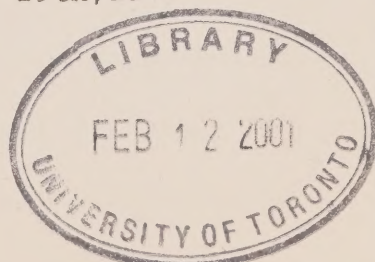
J.M. WOODARD, ESQ.

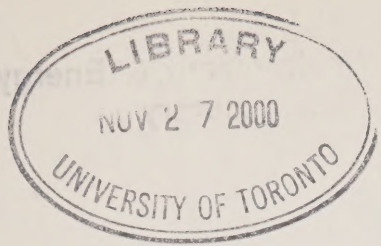
J.M. McDONOUGH, ESQ.

CHAIRMAN

COMMISSIONER

COMMISSIONER







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APPEARANCES:

MS. DEANA SILVERSTONE Commission Counsel
N.A. CHALMERS, ESQ., Q.C.) Counsel for Canadian
R.M. McLEARN, ESQ.) Pacific Limited.
LEON PAROIAN, ESQ., Q.C. Counsel for Robert
Girard.
IAN R. FISHER, ESQ. Counsel for the City
of Windsor.


B.J. MacDONALD - HEARING PROCESS
OFFICER

VOLUME 2

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Per: M.J. Cornell, C.S.R.
N. Graham, C.S.R.
P. Cornell.



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A-1 1 --- On Commencing at 10:00 a.m.

PCeg 2
3 THE HEARING PROCESS OFFICER: Order,
4 please, order.

5 THE CHAIRMAN: Good morning. Please
6 be seated. Well ladies and gentlemen, last night
7 while I presume most of you were sleeping we were
8 working.

9
10 We now have our decision in
11 connection with the motion for adjournment and the
12 suggestion that we should step down for various
13 reasons and our decision I will now read.

14 The respondents, with the support of
15 several interveners, have presented two preliminary
16 objections to the continuation of the present
17 proceedings: the first objection being based on the
18 panel's alleged lack of jurisdiction to hear the
19 application and the second being based on an
20 allegation by respondents of bias on the part of the
21 present panel.

22
23 In the alternative respondents
24 have requested an adjournment of the present
25 proceedings until the Federal Court of Appeal has
26 heard the appeal taken by respondents from the
27 decision of Mr. Justice Mahoney rendered on November
28 22nd, 1977.

29
30 One of the arguments supporting the



1 adjournment motion involves the undertaking of
2 June 27, 1977 by the Rail Transport Committee. It
3 is not necessary for the panel to make any comment
4 thereon in view of the fact that it, as well as
5 various other issues, is the subject of the
6 decision of Mr. Justice Mahoney. The panel feels
7 however that in any event it is not bound by this
8 undertaking. In the first place it was not given
9 by the present panel. In the second place it was
10 made at a time when the matter of costs was still
11 before the Railway Transport Committee.
12

13
14 Since then circumstances have changed.
15 The respondents themselves have removed the matter
16 from the Committee to another forum thereby preventing
17 the Committee from being able to adequately predict
18 time delays involved in hearing the motion for costs
19 and from being able to plan that and other hearing
20 commitments. The respondents state as a matter of
21 courtesy as well as a matter of a justice to them,
22 the Railway Transport Committee ought to postpone
23 the present hearing until the Federal Court Appeal
24 Division has rendered a decision on the appeal from
25 the decision of Mr. Justice Mahoney.
26

27 The panel considers it is doing
28 no discourtesy to the Appeal Division if it proceeds.
29 The Federal Court has itself recognized in the case
30



1 of Wardair versus the Canadian Transport Commission,
2 1973, CTC 111 our discretion to go ahead with
3 the hearing without waiting for the outcome of the
4 Appeal Court; the Court in that case in commenting
5 on the fact that there was no procedure in the
6 rules of the Federal Court for a stay of proceedings
7 has this to say and I quote from the Wardair versus
8 CTC Decision.
9

10 "I might add that even if a rule
11 permitting such a stay of execution
12 did exist, an Order under such a
13 rule is always subject to the
14 discretion of the Tribunal from whom it
15 is sought. There are cases where it
16 would evidently be very wrongful to
17 proceed with a hearing when the
18 matter is under appeal or review
19 such as when the very jurisdiction
20 of the inferior Tribunal is attacked
21 but there are also cases when it
22 might be equally wrongful to halt
23 all proceedings of the inferior
24 Tribunal every time an appeal is
25 brought or a review sought of some
26 incidental decision during the course
27 of the proceedings before such
28
29
30



1 inferior Tribunal.

2 "If this were done proceedings might
3 be halted almost indefinitely by a
4 series of appeals from minor decisions
5 to the great prejudice of the parties
6 wishing to proceed with the hearing.
7 It is always a matter of discretion
8 whether a hearing should be suspended
9 or not."
10

11 It was within the discretion of the
12 Railway Transport Committee to hear the application
13 at issue at this time and to continue the hearing
14 notwithstanding the proceedings taken against it by
15 respondents and the Committee considers it properly
16 exercised its discretion in acting as it did.
17

18 The Committee considered it not only
19 has the discretion but also the duty to proceed with
20 this application. The duty of the panel being in
21 accordance with the principle set out in the case of
22 CPR versus Alberta, 64 CRTC-129. The very
23 jurisdiction of the Committee to entertain applications
24 under the Railway Act is not being attacked. There
25 is no question that the Committee has jurisdiction
26 to hear and decide applications made pursuant to
27 Sections 216, 196 and 197 of the Railway Act and
28 Section 52 of the National Transportation Act.
29
30



1 Furthermore, respondents alleged
2 that the Committee's sole jurisdiction to hear
3 CPL's application is by way of review pursuant to
4 Section 63 of the National Transportation Act and
5 that it lacks jurisdiction moreover to hear a
6 review before any panel other than that which
7 decided to hear a new application.
8

9 The panel does not rely on Section 63
10 of the National Transportation Act as the source of
11 its jurisdiction and it therefore does not have to
12 decide whether or not the Committee lacks
13 jurisdiction to review or re-hear before a new
14 panel which issue is, in any case, before the
15 Appeal Division of the Federal Court.
16

17 This brings us to a consideration of
18 the respondents' preliminary objection to the
19 proceeding based on alleged lack of jurisdiction
20 to continue with the same.
21

22 As we have just pointed out we do not
23 agree that the source of our jurisdiction to entertain
24 applications where the Applicant has previously
25 failed lies in Section 63 of the National
26 Transportation Act. It is our position that the
27 Railway can re-apply to the Commission in such
28 circumstances by submitting a new application.
29

30 In the case at issue we will deal with



1 the application of Canadian Pacific Limited as a
2 new application and not as a review. There are
3 innumerable cases involving the Railway Transport
4 Committee as well as other Committees of the
5 Commission where new applications are submitted by
6 Applicants who had previously failed in applications
7 of the same kind.
8

9 Furthermore, according to CPL's
10 counsel, this application is not the same as the
11 previous one. In the present case, new evidence
12 will be adduced in support of the new application.
13 There is no doubt in our minds that a new panel
14 may hear a fresh application. In fact, it is our
15 position that this is the proper way to proceed in
16 such circumstances.
17

18 We turn now to the second preliminary
19 objection made by the respondents based on the ground
20 of bias on the part of -- I should say alleged bias --
21 on the part of the present panel.
22

23 We do not accept the view that there
24 is bias with regard to the present panel. Regarding
25 the allegation that the conduct of the Railway
26 Transport Committee in its handling of this matter
27 constitutes bias with reference to this panel, we
28 believe that this ground would apply to any other
29 panel which would have been appointed, the result
30



1 being that the Applicant would be deprived of its
2 legal right to be heard.

3 Furthermore, we believe that it is
4 not open to the respondents to argue that the panel
5 as a whole is biased because it decided to deal with
6 an application in a more expeditious manner than
7 the manner in which previous matters were dealt
8 with: to so argue is unjust.

9 It implies that it is prejudicial
10 for the Committee to act as expeditiously as
11 possible. In any case, any variance in time in
12 entertaining this application can be explained in
13 any number of ways other than on the basis of bias
14 such as the work load of the various Commissioners
15 involved. Additionally, we hold that bias must be
16 shown on the part of individual members of the
17 panel and not the panel as a whole.

18 For the reasons expressed above,
19 the preliminary objections based on lack of
20 jurisdiction and on bias are both denied and for the
21 reasons also expressed above the motion of
22 adjournment is denied as well.

23 While the panel has dismissed the
24 motion for adjournment and the motion that it should
25 disqualify itself or step down because of alleged
26 real or subconscious bias it must at the same time
27
28
29
30



1 register certain elements of concern with the state
2 or condition of the Applicant's application. A
3 condition which the panel feels may require certain
4 measures to be taken if the interveners and public
5 interest witnesses are to be given a fair hearing.
6

7 As we suggested earlier, this is a
8 new application. The application itself, however,
9 does not give the interveners any advance warning
10 of the position the Applicants will take on the
11 many questions that are of utmost importance to them.
12

13 For example, they do not know
14 whether the Applicant proposes to use the siding
15 24 hours per day or only part of the day or whether
16 the locomotive engines will be kept idling or be
17 shut off, assuming that the Applicant is successful
18 in the first place. The Applicant has proposed a
19 number of choices for continuation of the pedestrian
20 crossing but no one, including the Commission, has
21 seen the plans or specifications so as to develop a
22 position to support or oppose one or more of the
23 plans.
24

25 At the moment, the pedestrian
26 crossing is in use with pedestrians using the
27 crossing subject to the usual risks involved in a
28 level crossing.
29

30 Some members of the public not here



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1 represented might well favour the Powell Sidings
2 with an overpass over a situation where there is no
3 overpass and no sidings. In other words, no one
4 yet knows the actual case they have to meet. The
5 panel considers it unfortunate that the Applicant
6 has not seen fit to file a more complete and detailed
7 application setting out in reasonable detail why
8 it considers it must operate the sidings, how it
9 proposes to operate the sidings and the measures it
10 proposes to take to make the pedestrian crossing
11 safe.
12

13 Had the Applicant done this in the
14 first instance, the public and the interveners would
15 have had adequate information on which to decide
16 whether to support or oppose and the necessary
17 information to adequately prepare their opposition.
18

19
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B.1
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1 Furthermore the provision of details of the
2 Applicant's case would have allowed better preparation
3 for cross-examination.

4 Bearing the above observations in mind
5 the Panel proposes that the Applicant put in
6 immediately its evidence in chief, including full
7 information concerning the alternative types of
8 pedestrian crossings it proposes. The Committee
9 suggests that no cross-examination take place at this
10 time so as to facilitate the taking of evidence and
11 the completion of the Applicant's evidence in chief.
12

13 Following the hearing of the Applicant's
14 evidence the Panel is prepared to adjourn the hearing,
15 not indefinitely or for any of the reasons advanced
16 by the movers of the motions just dismissed, but to
17 allow interested parties and the Panel to review the
18 Applicant's proposal and for the interested parties
19 to assess their positions and prepare for cross-
20 examination, and for presentation of their own views.
21

22 The Panel therefore proposes, after
23 receiving the Applicant's evidence, to adjourn the
24 hearing. We consider that a two week adjournment
25 should be adequate to allow time to assess the
26 Applicant's evidence and to prepare opposing cases
27 in cross-examination.
28

29 Unfortunately a two week adjournment
30



B 2

1 is not possible for the Panel because of other
2 commitments of the Panel. We will therefore consider
3 adjourning until early in the new year, which is the
4 earliest time that we would have sufficient time
5 available to complete the hearing.
6

7 The Panel makes these observations as
8 a proposal. Perhaps the Interveners do not think
9 they need time to review the evidence or to prepare
10 for cross-examination. Perhaps they would prefer to
11 finish the evidence now this week. It seems likely
12 that the Applicant would not welcome our proposal.
13 In any case we will now hear your comments on the
14 proposal before making a final decision on the
15 procedure to be followed.
16

17 Now I realize this is all very new
18 stuff to counsel and to the interested parties.
19 And if it is the desire of counsel we would be
20 prepared to adjourn for ten minutes to give you a
21 chance to review your positions and to prepare what
22 position you wish to take.
23

24 MR. CHALMERS: I could answer some
25 of your questions, sir, if you would like that now,
26 before my friends' address, if that would be
27 convenient.
28

29 First of all I am instructed as to the
30 proposed use of the siding, I am instructed that it



B 3

2

1 would not be used 24 hours per day; and it would be
2 used for the meeting and passing of trains, and
3 nothing else. There will be evidence in regard to
4 the shutting off of diesels. As the Panel probably
5 knows, fuel conservation is requiring an experi-
6 mental program of shutting off diesels after a
7 certain number of hours anyway. And that will be
8 gone into by the second Canadian Pacific witness,
9 the operating witness. The plans have not been
10 submitted. And the reason you have not got the
11 plans and not got the evidence I take the Commission's
12 point, and Canadian Pacific will certainly endeavour
13 to co-operate on what you have outlined, even though
14 it means a delay which we regret and even though it
15 exposes the witnesses we planned to call to a very
16 well prepared cross-examination, which is fine, which
17 is as it should be.

18
19
20 But we want everything to be done in
21 open Commission, in all the context of the history of
22 this case and the history of round one. We did not
23 want to follow, we deliberately eschewed the normal
24 pattern which is derived from the Commission's usual,
25 in effect, in writing proceeding on 196-197
26 Applications.

27
28 The plans were saved up to be put in
29 in open hearing by the man who drew them available
30



B 4 1 for cross-examination. And they were sent by mail to
2 Ottawa in the normal way. And indeed they were not
3 finally settled till the local engineer who drew them
4 had them done. But that could have been overcome and
5 it could have been done earlier.

6
7 I regret that does not suit the
8 Commission and I apologize. On the other hand it was
9 done with a view to being able to support any
10 possible favourable decision of the Commission.

11 THE CHAIRMAN: Perhaps I might inter-
12 ject at this stage to say that I have been advised
13 by staff of the Commission, Mr. Chalmers, that you
14 did make some enquiries about whether the plans
15 should be filed and were not given any assistance
16 or direction. Unfortunately the request did not come
17 to the attention of the Panel members who might not
18 even have been available at the time. So I am aware
19 and the Panel is aware that you did make some
20 enquiry.
21

22
23 MR. CHALMERS: Well I have been
24 worried about it all along, because it cuts two ways.
25 My decision was, I might say -- never mind. But my
26 decision was to risk a difficulty I realized might
27 occur. And it has transpired already in one or two
28 different ways and it is now transpiring in another
29 one, in order to be sure that no one can say that CP
30



B 5

1 slipped this to the Commission up the back stairs.
2 So it's here and I am happy to tender it as soon as
3 we settle this question when my friends have made
4 some observations and possibly have made opening
5 remarks. I was planning in any event to put the
6 plans, which are lying on the radiator there, before
7 you so that you and your staff and my opponents could
8 study them at their leisure.
9

10 I believe my opponents, at least the
11 City of Windsor, has had them for some short time.
12 Because there is a matter of trespass on the park
13 and consultation with the Building Department. So
14 Mr. Kellerman who previously represented the City
15 may have the set before the final ones, but a set
16 has been with the City. And I asked my learned friend
17 Mr. Kellerman if they were going to go to other
18 opposing counsel. And he said, well since we are
19 going to be instructing, if I think I am putting it
20 accurately, he says we are going to be instructing
21 one of them and he is working with the other one, I
22 take it, and I do not mind at all if my learned
23 friends have probably seen them.
24

25
26 MR. FISHER: I think it is important
27 to know that I am advised through Mr. Kellerman that
28 those plans were very graciously made available by
29 Mr. Chalmers last Friday.
30



B 6

1

MR. CHALMERS: Well I don't know

3 2

when they in fact got them, I will take my friend's

3

words for that. But in any event they were requested

4

by Mr. Kellerman for municipal purposes and my friend

5

got them.

6

MR. FISHER: On Friday.

7

MR. CHALMERS: That may well be.

8

If you say so they were.

9

10

Finally, I would propose to outline

11

the case. The one practical problem that that leaves

12

is that of half a dozen CP witnesses only two are

13

employed by Canadian Pacific. One resides in Windsor

14

and one is coming across half a continent. One is

15

coming from a major centre in the United States.

16

17

MR. PAROIAN: You are not moving for

18

an adjournment, surely?

19

MR. CHALMERS: Goodness no, but I

20

have arranged their attendance this week and next,

21

and whether I can have them back for cross-examination

22

-- well obviously Canadian Pacific will use its best

23

endeavours to get them back. They are not people we

24

control, they are not people with great deference --

25

26

MR. PAROIAN: Mr. Chairman, good

27

gracious! Well, I'm sorry. go ahead.

28

MR. CHALMERS: My friends have the

29

right to cross-examine there and then and I suspect

30



B 7

1 they would be able ---

2 MR. PAROIAN: Very gracious of you.

3 THE CHAIRMAN: I might interject to
4 say that the Panel in fixing the date for a resumption
5 of the hearing for cross-examination would, of course,
6 through its counsel try to arrange with other counsel
7 to ensure that the witnesses are going to be available.
8 There is not much use in resuming if the witnesses are
9 not available.
10

11 We do have subpoenaing procedures
12 which counsel can use. But, of course, a Canadian
13 subpoena is not of much use outside of Canada.
14

15 MR. CHALMERS: In light of what you
16 said I anticipate no great difficulty with these
17 witnesses, but that is a small problem. Other than
18 that we are anxious to co-operate with whatever
19 disposition you make.
20

21 THE CHAIRMAN: Would other counsel
22 wish to speak now or have a short adjournment?

23 MR. FISHER: I would like to make an
24 observation or two before I request a few moments to
25 consider our position.

26 The first observation is this. And in
27 case there is any doubt about what I am saying I will
28 try to put it in very, very clear terms. I find it
29 astounding, sir, astounding that you do not consider
30



B 8

1 yourselves to be bound by an undertaking given by the
2 Railway Transport Committee.

3 THE CHAIRMAN: Mr. Fisher I am afraid
4 that I must interrupt. And I think that you know why
5 I am going to interrupt. This Panel and no panel of
6 the Commission welcomes nor do they tolerate argument
7 or comments on a decision such as this to dismiss a
8 motion.
9

10 If you do not like the decision that
11 we made there is an appropriate place for you to go.

12 MR. FISHER: That's exactly where I
13 am going to, in a moment, if I may ask for a few
14 moments to consider our position.
15

16 I feel that I am obliged to make that
17 observation Mr. Chairman. If I may put it another
18 way to you, sir, whose undertaking is it if it is
19 not the undertaking of the Railway Transport Committee
20 as the letter of June 27th says it is. Then to whom
21 do we look for fulfillment of that undertaking?
22

23 My second observation is, that I am
24 presuming from what you say, it may be of some
25 assistance to me, because you see I would like to
26 have answers to these questions in order to assess
27 the situation. I am presuming that the 2600 pages
28 of transcript as far as subsequent proceedings are
29 concerned, is of no value whatsoever. Is that the
30 situation?



C-1 1 THE CHAIRMAN: Mr. Fisher, the Canadian
MJCEg 2 Transport Commission is the same as all other
3 Courts and Administrative Tribunals. The formal
4 decisions that they make speak for themselves. If
5 you don't like those formal decisions and you don't
6 like the way you are being treated there are Courts
7 which, from time to time, straighten us out and
8 this panel has no objection to the Courts straightening
9 us out.
10

11 We do not engage in arguments with
12 counsel over what the Commission does. I can't
13 speak for the Commission.
14

15 MR. PAROIAN: At the risk of
16 interrupting my friend, you know, that last comment
17 does deserve some response. However can we go to a
18 Court to straighten out --
19

20 THE CHAIRMAN: Please sit down.

21 MR. PAROIAN: Anything --

22 THE CHAIRMAN: Please sit down, Mr.
23 Paroian.

24 MR. PAROIAN: No. I think -- Unless
25 my friend -- unless you order me to sit down --
26

27 THE CHAIRMAN: Well, I am afraid at
28 the moment I am ordering you to sit down.

29 MR. PAROIAN: Then I will speak at
30 an appropriate time. I trust I will be given that



C-2

1 opportunity?

2 THE CHAIRMAN: You will be given a
3 fair hearing on behalf of your clients but we do not
4 engage in debates with counsel once we have made our
5 decision. You do your arguing before a decision,
6 not afterwards.

7
8 MR. PAROIAN: I am not arguing the
9 motion. I am arguing and commenting on what you
10 just said. Mr. Fisher, you have a place to go. To
11 a Court. Would you please tell us how we get there
12 while this proceeding is going on.

13 THE CHAIRMAN: I don't think --
14 while it is not the function of us to comment on
15 the Commission's Decision or Orders or what it does --
16 it is also not our function to give legal advice to
17 people who are supposed to be qualified counsel.
18 Now --

19
20 MR. PAROIAN: Well the fact of the
21 matter is we can't go. Practically we cannot go so
22 please, sir, don't abuse -- let me withdraw that --
23 don't tell us -- don't tell Mr. Fisher we can go
24 to the Courts because we have no opportunity of going
25 to the Courts while you continue on here. So the
26 fact of the matter is we have no practical way to
27 challenge that decision that you have just made or
28 to seek the answers that Mr. Fisher has just asked
29
30



C-3

1 for and I apologize for having stood at this time.

2 I will sit down as a result of your
3 Order and out of courtesy and I will speak later. I
4 apologize.

5 MR. FISHER: I perhaps have been
6 misunderstood, Mr. Chairman. My comments are not
7 designed to be argumentative nor are they purely
8 for the purposes of debate but there are questions
9 which are surely relevant.
10

11 I understand (and I suppose you may
12 tell me I can understand or misunderstand, however
13 I choose), but I understand at this moment in time
14 that it is your position that yourself and your
15 brother Commissioners are not bound by an undertaking
16 given by letter on June 27th apparently of the
17 Railway Transport Committee. That is my understanding,
18 sir. I trust if that is not correct that is so?
19

20 THE CHAIRMAN: The transcript will be
21 available in due course and you will have an
22 opportunity, once again, to hear what we said.
23

24 MR. FISHER: My other question is:
25 Is it your intention in treating this as a new
26 application that nothing that has proceeded this is
27 in any way shape or form relevant and in fact we are
28 starting at square one once more? Is that what you
29 propose to do?
30



1 THE CHAIRMAN: Well now we are
2 talking about a matter of procedure and I am open to
3 suggestions. For example, in order to facilitate the
4 new hearing if, with the complete consent of all
5 the counsel involved you wish to dispense with
6 calling witnesses that were called before and have
7 us consider the transcripts of the previous hearings
8 for purposes of expediting the matter we will, of
9 course, consider that.
10

11 MR. FISHER: May I also ask you, sir,--
12

13 THE CHAIRMAN: But if counsel don't
14 consent then I am afraid this is a totally new
15 application and it has to be dealt with as so.
16

17 MR. FISHER: That is something we
18 should consider then. My next question is this:
19 That on April 5, 1977, Messrs. Jones and LaBorde
20 adjourned sine die the application of Canadian
21 Pacific under Sections 196 and 197 relating to the
22 Parent Avenue walkway.

23 Do I take it that you are ignoring,
24 forgetting, overriding or considering yourselves in
25 some way not bound by that Order as well?
26

27 You see, these are questions that we
28 must mull over in our minds.

29 THE CHAIRMAN: Well once again I
30 have no comment.



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MR. FISHER: No comment?

THE CHAIRMAN: No comment on that
matter whatever.

MR. FISHER: Thank you.

Is it your intention to permit
Canadian Pacific Railway to adduce evidence that was
available or could have been with reasonable
diligence made available at the prior hearings?

MR. CHALMERS: Well with great
respect --

THE CHAIRMAN: Mr. Fisher, I think
what I just said to you was our decision made it
clear. We are dealing with a new application. We
will hear the evidence that the Applicant puts
in.

MR. FISHER: Whatever that may be is
that correct?

THE CHAIRMAN: Whatever that may be
providing it is relevant.

MR. FISHER: Any relevant evidence at
all you intend to permit into the record, is that
correct?

THE CHAIRMAN: Relevant of course.
We would have no right to refuse that.

MR. FISHER: I see. Thank you.



1 THE CHAIRMAN: In other words, if
2 they follow the normal rules of evidence ---

3 MR. FISHER: The normal rules of
4 evidence, as I recall them, sir, with the greatest
5 of respect are that there is no evidence subsequently
6 permitted into a record on an appeal or a subsequent
7 application or whatever if that evidence was
8 available or could with reasonable diligence have
9 been made available.
10

11 THE CHAIRMAN: Mr. Fisher, you can
12 make that argument at the appropriate time in the
13 proceedings.
14

15 MR. FISHER: Well it appears that now
16 is the appropriate time, sir.

17 THE CHAIRMAN: If you want to raise
18 arguments about the admissibility of evidence when
19 the Applicant is putting in its case we will hear
20 you.

21 MR. FISHER: Well, subject to what
22 Mr. Paroian has I am requesting -- may I say two
23 hours to consider our position, to take instructions
24 to prepare for whatever might arise out of our
25 deliberations.
26

27 MR. PAROIAN: I would just like to
28 rise on the question that I had before and on a
29 point of clarification.
30



1 Your comment to Mr. Fisher was that
2 you don't argue with us. We have made our decision
3 but if you wish you have other alternatives and you
4 might exercise those alternatives. However, as we
5 both know, unless you grant an adjournment to permit
6 us to take those other alternative proceedings in
7 the Court the actual procedures to the Courts are
8 academic so that unless these people have a right or
9 obtain an adjournment to test your most recent
10 decision in the Courts, as you have invited us to do,
11 going on to the Courts is academic.

12
13
14 It will produce nothing because the
15 proceeding will be going on. Will you consider an
16 adjournment if we are prepared to take this matter,
17 this latest ruling into the Courts or are you going
18 to, as my friend suggested, as my learned friend
19 suggested yesterday, to continue on notwithstanding?
20 Have you made a decision on that, sir?

21
22 THE CHAIRMAN: Mr. Paroian, what you
23 are really doing is starting out to argue the whole
24 business all over again which you argued yesterday
25 and we are not going to entertain that argument.

26 MR. PAROIAN: No, no, no. It is
27 totally different, sir.

28
29 THE CHAIRMAN: We have made a ruling
30 on your application to adjourn. You are now



1 suggesting you want to have another adjournment
2 using -- and you and I both know that this is a
3 fact. You are going to use all the same arguments
4 you did before and we are not going to entertain
5 that and if we are wrong in not entertaining it then
6 you know where you can go.
7

8 MR. PAROIAN: Where I can go really
9 isn't going to get us anywhere because you know as
10 well as I do that it is academic. You have cut off
11 our rights. You have done that and let's identify
12 that. That is what your decision is --
13

14 THE CHAIRMAN: That's your opinion.

15 MR. PAROIAN: I am sorry, sir?

16 THE CHAIRMAN: That is your opinion.

17 MR. PAROIAN: Well, that is what you
18 have said. We are going to go on. We have no way
19 of testing your decision at this time. You are
20 going to go on.
21

22 THE CHAIRMAN: How long do you wish
23 to adjourn to to prepare your position?

24 MR. PAROIAN: I concur with my friend.
25 I think it will take us an hour, an hour and a half,
26 two hours. If that is too long well then, make it
27 15 minutes. What difference does it make.
28

29 THE CHAIRMAN: Would an hour
30 satisfy your requirements, Mr. Fisher?



1 MR. FISHER: I believe that Mr.
2 Paroian brought up a good point, Mr. Chairman, that
3 is if our deliberations lead us to conclude that an
4 application to the Court ought respectfully to be
5 made at this point in time, do I understand you as
6 saying if that conclusion is reached by counsel for
7 the respondents that you intend to go on even if
8 there is an application to the Courts being made?
9

10 MR. CHALMERS: Well with great
11 respect, Mr. Chairman, if you were a witness and
12 submitting to this cross-examination I would advise
13 you not to answer because you are being ---
14

15 MR. FISHER: It is awfully charitable
16 for Mr. Chalmers to be giving advice.
17

18 THE CHAIRMAN: Mr. Chalmers, please
19 sit down.
20

21 THE HEARING PROCESS OFFICER: Order,
22 please, order, please.
23

24 MR. FISHER: Those are questions which
25 are not designed as cross-examination, Mr. Chairman,
26 but in my respectful view are totally appropriate
27 and proper in order that we might intelligently or
28 at least endeavour intelligently to discuss our
29 situation.
30

Is it the intention of the Panel to
continue notwithstanding whatever efforts are made ---



1 THE CHAIRMAN: Well I thought that is
2 what I said.

3
4 MR. FISHER: Mr. Paroian I believe
5 made himself extremely clear to me but in any event
6 what he was suggesting was that if, as a result of
7 our discussions which will ensue after we have
8 read your judgment and considered your judgment --
9 if those deliberations lead us to conclude that an
10 application ought to be made in the Courts at this
11 time ---
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D.1
PC/ko

1 ... is it your intention to tell us
2 irrespective of whatever application to the court we
3 may bring now that you intend to proceed notwith-
4 standing that?

5 THE CHAIRMAN: Yes.

6 MR. FISHER: Thank you.

7 FROM THE FLOOR: Mr. Gray, how can
8 you sit up there and say this Panel is not prejudiced.
9 We are not stupid people.

10 THE CHAIRMAN: The hearing is
11 adjourned.

12 How much time would you say it requires
13 two hours? That brings us to noon. The hearing will
14 resume then at one o'clock. That will give you an
15 opportunity ---

16 FROM THE FLOOR: Can I be heard
17 please Mr. Chairman?

18 THE CHAIRMAN: We have made a ruling.

19 FROM THE FLOOR: Mr. Chairman, you
20 have allowed counsel time to speak on your ruling.
21 Could I please speak out as well?

22 THE CHAIRMAN: The counsel that we
23 have here sir really have no right to argue with us
24 about the basis of our ruling.

25 FROM THE FLOOR: I do not want to
26 argue. I want to enlarge on our application or at
27
28
29
30



D 2

1 least on the evidence they are going to submit. I
2 am not going to argue your decision. I will leave
3 that to learned counsel.

4 THE CHAIRMAN: I am sorry sir. We
5 are going to adjourn the hearing until one o'clock
6 to give people a chance to determine what position
7 they wish to take. At one o'clock we will then hear
8 everyone including you sir.

9
10
11 --- Hearing adjourned until 1:00 p.m.

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--- On resuming

THE HEARING PROCESS OFFICER: Order
please, order.

THE CHAIRMAN: Good afternoon. Be
seated please.

Ladies and gentlemen, I apologize for
starting somewhat late this afternoon. We delayed
the commencement of this afternoon's session to
comply with the request we received from one of
counsel and understand that Mr. Fisher wishes to
address us now.

MR. FISHER: Yes, Mr. Chairman.
After the adjournment this morning I endeavoured to
receive instructions from my client, the City of
Windsor. I have not been able to obtain full
instructions from them. I have spoken of course
with the City Solicitor's office. I expect to have
those instructions hopefully by two o'clock but I am
certainly confident that I will have them by 2:30
but at this point in time I do not have instructions.

THE CHAIRMAN: I presume then you
would appreciate having a further delay until two
o'clock to enable you to get instructions.

MR. FISHER: Might I suggest 2:30
but if I receive them earlier I would certainly make
that fact known to the Process Officer.



AA 2

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MR. PAROIAN: I was suggesting to my friend consistent with your suggestion sir that perhaps two o'clock might be in order and if he does have his instructions we could come back, if he does not we could come back again and further make an application for a slight expansion of that time.

THE CHAIRMAN: Well, I must say having had some experience in the practice of law myself, I know the embarrassments that counsel are faced with if they do not have instructions from their client. We did start earlier than normal this afternoon because we adjourned this morning. I will just confer with my colleagues for a moment.

All right, we will adjourn until two o'clock to afford you a chance and we will reconvene and if you still have problems you can address us again.

MR. FISHER: Thank you.

THE CHAIRMAN: We will adjourn again until two o'clock.

--- Short adjournment

--- On resuming

THE HEARING PROCESS OFFICER: Order please, order.

THE CHAIRMAN: Please be seated.

Ladies and gentlemen, on behalf of the



1 Panel, I would like to thank counsel for occasioning
2 this modest delay in our proceedings. This is the
3 first time we have had a decent rest for some time.

4 We are now hearing representations on
5 the proposed procedure which we outlined this morning
6 and Doctor, I presume, you are leading off.

7
8 DR. HENDERSON: Sir, I have tried
9 twice before today to be recognized by the Chair and
10 I felt the only way I was going to be recognized was
11 to come and stand at this microphone.

12 I would like to comment on this
13 morning's procedure but before I do so, with your
14 attention please, I would like to ask you some
15 questions.
16

17 As a layman, ignorant of any legal
18 matters, I would like to have two questions answered
19 and then I would like to exercise my right to comment
20 on this morning's proceedings.

21 The first question I would like to
22 ask you, sincerely, are the feelings expressed by
23 the Interveners not represented by counsel recorded
24 officially in the transcript?

25
26 THE CHAIRMAN: I would say yes sir
27 beyond doubt.

28 DR. HENDERSON: Is there any attention
29 paid to these arguments of the Interveners without
30



1 counsel when the transcripts are reviewed and the
2 decisions reached?

3 THE CHAIRMAN: By all means.

4 DR. HENDERSON: I am very happy to
5 hear that sir.

6
7 This morning, as an Intervener, I tried
8 to be recognized by the Chairman and was ignored. I
9 did not jump out and shout which I recognized might
10 be contrary to the respect of the Court. I did so
11 quietly with my hand raised and you chose to ignore
12 it.

13
14 You asked for comment from the
15 attorneys and yet you refused to recognize those who
16 are not represented by attorneys.

17 Sir, you strangled my legal right to
18 be heard in this court. You should be ashamed.

19 To claim to act as an impartial judge
20 and yet to behave in such a manner I suppose I should
21 not be surprised by your failure to recognize a
22 private citizen who is an Intervener. It has been
23 the past record of the CTC to fail to recognize and
24 fail to answer requests and letters of the people
25 concerned.

26
27 Why would you refuse to extend the
28 same courtesy to me that I was willing to extend to
29 you in my effort to be recognized in an orderly
30



1 fashion?

2 I feel that justice was not served
3 this morning. Surely a basic right of an Intervener
4 is his right to be heard and this was denied to me.

5 Do you still feel you have no bias in
6 regard to this hearing?

7
8 In your questions directed to Mr.
9 Chalmers you have asked how long the CPR intends to
10 use the sidings per day. His answer was: less than
11 24 hours. I would caution you, sir, do not be misled
12 by that. That could mean anything from one hour to
13 23 hours or 23½ hours. The track record of the CPR
14 in this matter has been to mislead and misrepresent
15 what has taken place in the past and is likely to take
16 place in the future.

17
18 We already have on record the fact that
19 the CPR intends to extend the siding to five tracks
20 from its present three. I would get the impression
21 from your question directed to Mr. Chalmers with
22 regard to how long these tracks are to be used per
23 day and what dangers are involved, that you have
24 already come to a conclusion that the tracks will be
25 re-opened. Am I wrong in this assumption?

3 27 Does the Panel honestly have any
28 concern about the dangers presented by the presence
29 of this marshalling yard in a residential area? I
30



1 would like to ask you a question: how many deaths are
2 you willing to accept as an acceptable number in the
3 event of an explosion of a car containing propane
4 for instance? Clearly the CPR is willing to accept
5 any number.
6

7 Every bit of the cost of this hearing
8 up to this point has been incurred by the presentation
9 of the case for the CPR with the exception of the two
10 or three hour period taken by the citizens one evening
11 in June of 1975. Do you have any conception of the
12 costs to the citizens of the area that this delaying
13 action on the part of the CPR has brought on or do
14 you care?
15

16 Now, we have another ruling for an
17 adjournment on your part that will further increase
18 the costs. How often will the CTC allow the CPR to
19 re-apply? If this is allowed to go on forever, or at
20 the whim of the CPR, surely, gentlemen, even you can
21 recognize the CPR can outlast anyone in court and that
22 the CPR in this matter could never lose a case.
23

24 From your ruling this morning with
25 regard to the previous hearings and the fact that
26 the previous hearings do not count for anything in
27 the present hearing, you have placed the residents
28 of the area of having committed themselves to many
29 thousands of dollars worth of expense to no avail.
30



1 I realize this amount might be
2 regarded as a pittance by the Court and by the CPR
3 and yet to the residents of this area this is a very
4 real and heavy burden that your ruling has tended to
5 increase.
6

7 The final straw in this morning's
8 hearing came when Mr. Chalmers attempted to instruct
9 the Court as to how they should proceed. This shows
10 that the CPR not only holds the City of Windsor and
11 the citizens in contempt but the Court as well.
12

13 I thank you for allowing me to speak.

14 THE CHAIRMAN: Thank you Doctor.

15 May I make a comment to the members
16 of the public here and in particular to the Doctor
17 since he raised the question.
18

19 There were a large number of hands up
20 at the time we adjourned this morning and I presume
21 all of the people who had their hands up could very
22 well make the same observations which the Doctor
23 made and I must say, as far as the members of the
24 public here are concerned, I sympathize with how
25 they feel. I realize that this is an extremely
26 important matter to them.
27

28 On the other hand, we had to adjourn
29 to give the people involved a chance to give some
30 thought to what we had done and to read copies of the



1 Decision when they were available and by not hearing
2 you then Doctor, and this applies to every member of
3 the public here, we were not trying -- if we gave
4 you the impression your views are unimportant it was
5 a totally false impression. Your views are
6 important. It was not intended to be insulting or
7 to ignore you or to be impolite. It was an attempt
8 to try to continue the hearing in an orderly and
9 proper and acceptable fashion and if there was an
10 impression given anyone that you were being ignored
11 or you were being insulted, then I apologize profusely
12 on my behalf. It was not the intention. It is still
13 not the intention. Your views are very important
14 and when you all come forward, tell us what is on
15 your mind, feel free. We are very interested in how
16 you feel. If we were not very interested in how you
17 felt we would not be here.

20 Now, having given that diatribe, please
21 proceed sir.

22 MR. CHARRON: My name is Gabriel
23 Charron. I, along with Dr. Henderson, feel that I
24 was closed off this morning. In fact, I was. I was
25 recognized and then closed off.

27 Mr. Gray, you said in effect this
28 morning that the CPR would offer evidence -- would be
29 required to offer evidence rather than you would hear
30



1 from the Respondents regarding the adjournment, on
2 your part, until after the new year.

3 I am a legal Respondent. I filed
4 letters with the CTC and CPR. When I stood to be
5 heard and I asked to be heard I was closed off. I
6 most strongly and formally object to this treatment.

7 I, along with Dr. Henderson, still
8 feel that my rights were abrogated. I should hope
9 they would not be denied me again during this hearing.
10 If they are, I have no alternative really, you know,
11 I would have to file suit against the CTC. I think
12 I have two dollars in the bank.

13 In objecting to this treatment it
14 appears to me, and I say appears advisedly, it
15 appears to me that the CPR is being favoured since
16 they were allowed to speak as Applicant and I was
17 closed off as a Respondent.

18 In getting back to CPR's evidence, I
19 will come right out and say that I do not trust the
20 CPR and this is nothing new. This is a lot -- in
21 several places or maybe in several hundred places
22 in the 2600 pages of the transcript from the past
23 hearings this was brought out. CPR evidence was not
24 produced when requested. When it was requested it
25 was pried out of them over days, practically
26 subpoenaed.



1 They were asked for forecasts of the
2 sidings. We did not receive that. They were asked
3 for twenty year forecasts for the Powell Sidings.
4 The Commission, or the Committee rather, receives
5 the forecasts for the main line. I'm not interested
6 in the main line. They can run a hundred times a
7 day through there if they so desire. Those trains
8 go through in three or four minutes. They do not
9 bother me. I knew that when I moved into the area
10 15 years ago, so that I am prepared to live with.

11
12 And in going along with that in
13 presenting our evidence, I put forward that they
14 should be made to present hard fast evidence in
15 writing on every aspect of this case. They have
16 lied before in these hearings. One point they made
17 was that the reason they had picked Powell Siding
18 was that the American crews could not go beyond
19 the yard limits which somebody in CPR arbitrarily
20 decided would be Walker Road to begin with. We
21 found out after this was not true. Now, if it was
22 true all you had to do was go up to the Conrail
23 siding, or rather the Conrail tracks at Walker Road,
24 between Walker Road and C&O and the yard limit there,
25 there was a sign that has since disappeared, that
26 was the yard limit for the Penn Central yard.

27
28
29 THE CHAIRMAN: Excuse me, just for a
30



1 point of clarification: what is the C&O?

2 MR. CHARRON: Chesapeake & Ohio.

3 Well, sir, if you do not know that, I would suggest
4 you read the past transcripts of the C&O. It is a
5 railway company with which the CPR has entered into
6 an agreement and that is what all this ruckus is
7 about really, okay?
8

9 MR. WOODARD: Just as a point of
10 correction, that has not been the C&O for a matter
11 of three years. It is now the Chessie System.

12 MR. CHARRON: Well, I stand corrected
13 sir. It is the Chessie System.

14 MR. WOODARD: The people here were
15 laughing at Mr. Gray because he did not know what
16 C&O was ---
17

18 THE CHAIRMAN: May we have some
6 19 order please. I am familiar with what the Cheasapeake
20 & Ohio System is and with the Chessie System. I just
21 wanted it on the record for the purposes of the
22 transcript what C&O you were referring to. Thank
23 you.
24

25 MR. CHARRON: Enough said. It is
26 rather discouraging at this point but enough said.

27 Now, we are also told there would be
28 two train meets and that was it. This is what was
29 presented to us at the last hearings, that there
30



1 would be two train meets a day and Mr. Chalmers has
2 offered evidence this morning and in not trusting
3 the CPR and presuming or assuming they are going to
4 carry on the same way as they did during past hearings,
5 that would be the extent of his evidence, his state-
6 ment that these tracks would not be used 24 hours a
7 day. These tracks with two trains when they were used,
8 were used over a period of 24 hours a day. They might
9 be used at three o'clock in the afternoon with
10 engines idling for four or five hours. They might be
11 used at three o'clock in the morning. They should be
12 specifying in their Application, which we hope to
13 defeat, how many trains, what hours will those trains
14 run.
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1 CPR cannot seem to stick to a schedule so that trains
2 come in there at 3 o'clock in the morning any time
3 of day or night. In fact one night, well this is
4 in my presentation, but one night they broke a
5 draw bar in the tunnel, as you can imagine, drew the
6 train around to the Powell Siding and spent several
7 hours repairing it, spent several hours testing it,
8 chugging back and forth on the Powell Siding in the
9 middle of the night until about 2 o'clock in the
10 morning.
11

12
13 They skated all through the last
14 hearings, they should not be allowed to do that
15 through this hearing. They should be presenting
16 hard fast evidence in writing that can be debated
17 properly.
18

19 These lawyers spent half their time
20 during the last hearings prying information out of
21 CPR witnesses, literally prying it out of them.
22 They are such good skaters that they can enter the
23 Olympic competitions by now.

24 Another point I would like to make,
25 I would suggest respectfully that all respondents
26 wishing to speak, and you have the witness forms
27 filled out so that we can speak intelligently on the
28 subject, I think we should also receive copies of
29 this evidence from the CPR.
30



BB2

1 I would be quite willing to give them
2 copies of mine, xeroxed copies of mine. I do not
3 think that Mr. Chalmers is worried too much about me.
4

5 THE CHAIRMAN: Excuse me, were you
6 talking about the exhibits?

7 MR. CHARRON: I am talking about
8 exhibits, I am talking about evidence, sir, I am
9 requesting everything.

10 Now I am very much bothered by what
11 happened this morning. As my wife said I guess
12 we have to try to explain this to the children. I
13 am not playing on this but it's true. CTC is a
14 regulatory body to protect the public's interest
15 from conglomerates or federally chartered companies
16 such as Bell Canada, the Railways, what have you.
17 I am with Bell Canada. Bell Canada is well regulated.
18 We cannot make a move without somebody coming down
19 on us.
20
21

22 Now does the CTC regulate CPR? Or
23 does the CPR regulate the CTC? I wonder, that's a
24 question that I am posing, I am not drawing any
25 conclusions.

26 You are a public body appointed to
27 act on my behalf and as a member of the public, and
28 to protect my interest. I would like the panel to
29 start acting as though it is looking after my interest,
30



BB-3 1 at least even in appearance, and those of the
2 hundreds of residents in the neighbourhood to make
3 CPR play by the rules. I thank you.

4 THE CHAIRMAN: Thank you, sir.
5 Who's next? Any other representations by members
6 of the public? Yes, please come forward.

7
8 MR. RIGBEY: My name is James
9 Rigbey, R-i-g-b-e-y, 2515 Windemere Road.

10 I am a little puzzled because
11 Subsection 7 of Section 216 of the Revised
12 Statutes begins by saying -

13 "The Commission after being satisfied
14 that the public convenience is
15 being served ..."

16
17 and goes on to say what decisions they may make.

18 Now they have to be satisfied that
19 public convenience is being served. Now in our
20 previous hearings, which incidentally we won as you
21 know, I heard not one tiddle of evidence put forward
22 by the CPR to show that the public convenience was
23 being served by the Powell Siding. We all know, and
24 it will be brought out very fully I am sure, that
25 public inconvenience is being served or will be
26 served if this goes through.

27
28 Now, let us look at one or two of
29 these. I would not take time to go through them all.
30



BB-4

1 But first of all we have the devaluation of private
2 property. Now there are adequate industrial areas
3 to the east and to the west of the Powell Siding
4 where it now is. And yet the CPR in its wisdom
5 decides to place it right adjacent to a prime
6 residential area including a school and a park.
7

8 Now why would this devalue property?
9 Mr. Chairman, have you ever seen a railway marshalling
10 yard in a residential area of the city? In my
11 experience it is usually in a place which might be
12 described as slums or very close to being slums.
13 Now this cannot be, surely, a mere coincidence.
14

15 Why are they in the slums? I will
16 tell you why. Because the Railway spawns the slums.
17 why
18 And/does that occur? Because no buyer of
19 property in his right mind would buy property
20 adjacent to a railway siding.

21 Now there are many reasons for this
22 of which I am sure you are aware. First of all
23 his children go to a school adjacent to that
24 siding. They are sitting at their desks barely
25 150 feet from what could be part propane tanks and
26 anything that the CPR carries. They are protected
27 by what? By glass windows.
28

29 Now I do not have to paint a picture
30 of what might happen. You have all read in the



BB-5

1 papers of numerous accidents in railway marshalling
2 yards and the havoc and devastation it has caused
3 and the human life which is lost. Besides these
4 children could even be in the yard up to 50 feet
5 from the siding from an exploding propane tank or
6 what have you, without any protection at all.

7
8 Now we have the overpass which I
9 would not take up your time with right now. But
10 also we have the environmental degradation in the
11 area. How would you like, Mr. Chairman, to go home
12 after these meetings and find a diesel engine parked
13 in your back yard? Or maybe not one but several.
14 Now Mr. Burbidge of the CPR I am sure loves trains
15 or he would not be in his present position. But I
16 do not think that he loves them enough to go to bed
17 with them, and that's ^{what} we will have to do if this
18 siding is put up; practically go to bed with them.

19
20 These are just a few of the public
21 inconveniences, and that is a very mild word, as you
22 must agree. I could use stronger ones. But
23 because Subsection 7 says, the Commission must be
24 satisfied that it meets public convenience, I am
25 using the word inconvenience.

26
27 And I present to you, sir, that the
28 CPR in no way is making any attempt to live up to
29 this code whereby they have to satisfy the
30



BB-6

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Commission that public convenience will be served.

Thank you.

THE CHAIRMAN: Thank you very much.

Did you fill out an appearance form, sir?

MR. RIGBEY: No sir.

THE CHAIRMAN: Are you interested in getting copies of the exhibits when they come in?

MR. RIGBEY: Yes, please.

THE CHAIRMAN: Do you suppose that some time before you leave you could fill out a pink form? Sorry to put you to this trouble but that will ensure that you get copies.

MR. RIGBEY: Thank you.

THE CHAIRMAN: You are welcome.

FR. GIROUX: My name is Father Giroux.

THE CHAIRMAN: Go ahead Father.

FR. GIROUX: I feel a degree of unfamiliarity with the situation, with the geographics or the environmentals, the closeness of the homes, the presence of the park. My real concern is that I have been involved as a member of the community who has some kind of position of influence. And I feel that I have been in touch closely with the people who have been affected. And as I was listening to Mr. Chalmers I was caught up with his new evidence that he is proposing to bring, he is



BB-7 1 going to bring a man from some far off State to
2 give us a scientific observation of noise pollution
3 and what other kinds of pollutions that he wishes
4 to present.

5 I think you would handle it much more
6 simply to invite the CPR to put Chesapeake and
7 Ohio engines maybe next to Mr. Dante Pellarin's
8 home on the southern track.
9

10 FROM THE FLOOR: Four Father, there
11 were four before.
12

13 FR. GIROUX: We will use four, there
14 were four before, to put four there and to allow us
15 as human beings who will have to sleep, eat, make
16 love and fight in that home, that we are there for
17 a bit of time and say this is human.
18

19 I think this is the kind of dilemma
20 with which the people are caught with. We are
21 arguing, debating, and I think the lawyers and the
22 people are doing this very, very effectively, the
23 question of the human, we are dealing with human
24 space and human space within city limits.
25

26 I feel really that there is a
27 tendency that, I am very willing to continue this
28 debate but I think it has to be also considered and
29 debated keeping in mind the reactions of residents.
30 I could feel it to be a very, very great insult to



BB-8

1 us that we bring in the scientific kind of people who
2 will come up with fact finding that is out of touch
3 with what it is really doing to people. And I
4 really believe that many people now are really caught
5 up with, should we even bother coming to these
6 hearings? It's like going to Church. It reaches a
7 point where it does not really have that much
8 significance in your life and you sort of say, well
9 why go? Many people are being caught with this
10 question of this hearing, why come? And I believe
11 that the Church has problems and this hearing has
12 its problems too.

13
14
15 THE CHAIRMAN: Well, Father, there
16 was one question I wanted to ask you. You did not
17 come right out and say this but I sort of gained the
18 inference from what you said to us that perhaps you
19 felt we should go and look at this, take a view in
20 other words?

21
22 FR. GIROUX: I believe, I am a little
23 hesitant in saying that because you are seeing it in
24 a state of non-use.

25 THE CHAIRMAN: I see.

26
27 FR. GIROUX: Although, to see it in
28 a state of non-use with a little bit of imagination I
29 think -- I think many of the people would be very,
30 very hospitable to give you the dimension of the



BB-9 1 place. But I still think you would have to keep in
2 mind the impact of the actual process of its being
3 used to get the full appreciation as the past
4 panel had the benefit to have, which you will not
5 have at this time.

6 THE CHAIRMAN: Thank you very much
7 Father.
8

9 Are there any other members of the
10 public who would like -- would someone lower the
11 microphone?

12 BEATRICE ASMAR: I am Beatrice Asmar
13 and I live at 2588 Ch Road. During the
14 last hearings I invited Mr. Hibbard and the CPR
15 officials to come and spend one week at my home and
16 find out exactly what we are putting up with.
17

18 I live less than one hundred and
19 fifty feet from that track. And when those tracks
20 were all in use it was much worse than just with the
21 main line. But believe me, the main line is getting
22 on our nerves.
23

24 I would not mind if you fellows came
25 and lived for one week at our house and see what
26 it's like. We may be talking together in our
27 kitchen and a train goes by and our windows vibrate
28 so that we have to quit talking, we cannot hear
29 what the other one is saying. Now if you think that
30



BB-10

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that is not nerve racking you should try it for a
while.

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MJC/ko

1 Now if you think that isn't nerve
2 racking you should try it for awhile and it just
3 seems to me that if they get these trains in with
4 the extra weight and the extra vibrations of these
5 trains passing, it is going to be worse than it is
6 now. But, you know, when Mr. Hibbard was there
7 inspecting the tracks this last time, it was amazing
8 how many trains didn't go by those few days.

10 I don't know where they re-routed
11 them but they sure didn't pass like the regularly
12 did, and after he left they all came back again.

13 --- (Applause)

14 And I am sure that if you were there
15 they would do the same thing again.

17 Thank you.

18 THE CHAIRMAN: Just a moment. Could
19 I ask one question?

20 MRS. ASMAR: Yes sir.

21 THE CHAIRMAN: Do you share Father
22 Giroux's feeling that we wouldn't get the real
23 feeling for the situation if the sidings were empty
24 at the time we went there or do you think it would
25 worthwhile to go and have a view providing it was
26 arranged so that a train could come through while
27 the view as being taken?

28 MRS. ASMAR: If the regular run were
29
30



CC 2

1 allowed to continue you would get a good view.

2 THE CHAIRMAN: What time does the
3 regular run take place?

4 FROM THE FLOOR: We never know.

5 MRS. ASMAR: Pretty well all day but
6 it was real funny that there was no trains going
7 through from about eleven o'clock in the morning till
8 about nine o'clock at night and from nine o'clock
9 until eleven o'clock they were just one after the
10 other but Mr. Hibbard wasn't there.

11 THE CHAIRMAN: It sounds like a
12 conspiracy!

13 MRS. ASMAR: I think it was!

14 THE CHAIRMAN: Thank you very much.

15 Yes sir?

16 MR. DANTE PELLARIN: My name is
17 Dante Pellarin, 926 South Pacific. I would like to
18 ask you if it is possible for me to send you an
19 invitation, an invitation to spend one evening in
20 my own place if the marshalling yard will be allowed
21 to be used?

22 THE CHAIRMAN: Certainly you can send
23 me an invitation, sir, but I don't think -- I think
24 that I would probably be subject to some criticism
25 by the Court if I did it in the course of these
26 proceedings unless all lawyers were there too and,
27
28
29
30



1 you know, they might be pretty --

2 MR. PELLARIN: I understand. I do
3 understand your position, sir.

4 THE CHAIRMAN: But after the matter
5 is out of our hands, sir, I hope that you would feel
6 free to invite me anytime.

7
8 MR. PELLARIN: Thank you. Another
9 thing. I do believe it is a necessity for you and
10 your colleagues to view the marshalling yard and the
11 main line and if it is possible arrange with Mr.
12 Baxter to have a train running. Not in the marshalling
13 yard. On the main line. Just on the main line and
14 have them act as a normal day acts which I do believe
15 some of the conductors -- they don't know to use the
16 -- I believe they are using a cord or something for
17 the whistle or horn or -- well, it's just expected to
18 be human but like they were originally.

19
20 THE CHAIRMAN: Just a normal practice?

21 MR. PELLARIN: Just a normal practice,
22 yes.

23
24 THE CHAIRMAN: Thank you.

25 MR. PELLARIN: That is all I have to
26 say.

27 THE CHAIRMAN: Thank you very much,
28 sir.

29 Are there any other members of the
30



1 public?

2 MR. KEN MORRIS: My name is Ken
3 Morris.

4 THE CHAIRMAN: Sir, I remember you.
5 Molotov Cocktail Morris!

6 MR. MORRIS: There is a question that
7 bothered me from the start of the CPR's usage of the
8 sidings. The first problem we had was an eight hour
9 period of trains running, left idling maybe twice a
10 day and I get the belief that the reason for this
11 eight hours was an eight hour differential between
12 the Chessie and Canadian Pacific Railway.

13 Did at any time the Canadian Pacific
14 Railway go to the trouble of negotiating the two
15 unions involved to eliminate this eight hour period
16 and also eliminate the use of the Powell Sidings at
17 all?

18 I don't believe that this has ever
19 been tackled, but probably the reason for this eight
20 hour shift difference between the two unions involved
21 and I don't think it was ever negotiated.

22 If it had been negotiated I don't
23 think there was any need for the Powell Siding at
24 all.

25 THE CHAIRMAN: Well, Mr. Morris, I
26 will give you my undertaking and I hope my colleagues
27
28
29
30



1 and my staff that are present will make sure that I
2 live up to it because I am getting along in years
3 and my memory isn't what it should be, but I will
4 undertake to ask that question of CP if no one else
5 does.
6

7 MR. MORRIS: And as for the limits on
8 Walker Road as being the extent of the American
9 drivers -- I think this is also a negotiable fact.

10 THE CHAIRMAN: I will ask that one
11 too.
12

13 MR. MORRIS: I live on Grand Marais
14 East and my property borders right on the track and
15 I am in a position where I have problems through
16 noise. We say that CPR are going to bring on
17 officials or people experienced with sound. I am
18 a layman and I don't know too much about sound, but
19 what I have read about sound is that the problem
20 that we started out with was with low frequency
21 sound and we have got no legislation in Canada ruling
22 on this or governing the limits of it.
23

24 We have some limits on the volume of
25 sound as far as decibels are concerned. Frequently
26 we don't have no control for and this is our biggest
27 problem.
28

29 I am no scientist but I can assure you
30 that when we get low frequency sound it is deadly.



1 Seven cycles a second could kill everybody in this
2 room. The only graph available to the public show
3 decibel readings starting about 30 cycles a second
4 which could rupture a man's stomach.

5 If we are going to have scientific
6 evidence let's have the whole lot, and I assure you
7 if you start studying the low frequency volumes of
8 sound it is terrifying.

9
10 I hope that you take all of this into
11 consideration.

12 Thank you.

13 THE CHAIRMAN: Thank you sir.

14 MR. DAN O'CONNOR: My name is Dan
15 O'Connor and I live at 2564 Bing.

2 16 Molotov cocktails were brought up here
17 a few minutes ago in the hearing and just consider
18 the Molotov cocktails that would be stored in some
19 of these big cars that would be stored on the siding.

20
21 I remember seeing, during World War II
22 in Algeria, a train explode outside of Algeria and
23 it wiped out hundreds of people.

24
25 Now the trains today and the cars are
26 much more larger and they carry so much flammable
27 material in these trains on these cars that an
28 explosion would be a disaster in our area.

29 Not only would it wipe out the school
30



1 but it would also wipe out the homes, so I say on
2 that basis that the CPR should not be allowed to use
3 the siding.

4 Why only last week it was in the
5 papers that, you know, -- I forget exactly where it
6 was, Saskatchewan or Alberta -- but there was a train
7 derailed with several cars of sulphuric acid. Just
8 think what that would do to our environment.

9
10 Thank you.

11 THE CHAIRMAN: Thank you, sir.

12 MR. AUGUST CONEN: My name is August
13 Conen.

14 I only have two small points which
15 people in our neighbourhood have asked me to bring
16 before you this afternoon.

17 During this morning's procedures the
18 solicitor for CPR counselled the Panel on a point of
19 law and we would like to ask you is the CPR solicitor
20 retained by the Panel?

21
22 THE CHAIRMAN: The answer to that is
23 easy. No he is not.

24 MR. CONEN: Is this a normal action
25 during the process of a public hearing?

26
27 THE CHAIRMAN: Well, Mr. Conen, these
28 lawyers are a little bit hard to control, sir, from
29 time to time and we try to keep an nice orderly
30



1 hearing and try to give everybody a fair chance to
2 be heard, but when they stand up and start talking
3 sometimes they have it said before you can get them
4 interrupted. So the answer is that now and then
5 lawyers do things that we would prefer that they not
6 do but they do them anyway.

7
8 MR. CONEN: Some of our first
9 experiences into hearings has been this hearing now
10 for two or three years and we realize that some
11 lawyers stand up once in awhile even without being
12 asked to speak, but when they do speak out of turn
13 we also have noticed that the Chairman has admonished
14 those. We did not hear any admonishment this morning
15 to the CPR solicitor for that advice.

16
17 Thus it appears to us as accepted.

18 THE CHAIRMAN: Excuse me for just a
19 moment but my transcript quotes me as saying: "Mr.
20 Chalmers please sit down".

21 MR. CONEN: We did not hear that,
22
23 sir.

24 THE CHAIRMAN: Oh, I am sorry.

25 MR. WOODARD: It is in the transcript.

26 MR. CONEN: Thank you very much.

27 I don't hear the transcript nor see it ---

28 THE CHAIRMAN: We try to treat them
29 all alike but sometimes it might appear to the members
30



1 of the public present that I am treating some more
2 vigorously than others but then, you know, from time
3 to time one of them deserves it more than others if
4 you understand.

5 MR. CONEN: Well we heard you suggest
6 very strenuously to one of the solicitors on our part
7 that he was close to contempt, but we did not hear,
8 even in a loud voice, please sit down Mr. Chalmers.

9 You see, that is the appearance that
10 is difficult for us to understand.

11 THE CHAIRMAN: Well I assure you, sir,
12 that this Panel tries to treat everyone equally and
13 everyone fairly. In the hustle and bustle of the
14 exchange now and then we make mistakes the same as
15 everyone else does, and when I make mistakes I try
16 to admit them and I try to make them as few as I can.
17 But I unfortunately am just human like everybody else
18 and I make them.

19 MR. CONEN: The other point that we
20 want to bring up is obviously very disturbing to us
21 since we have been involved in two years of previous
22 hearings. That is (and I am not quoting from the
23 transcript because I do not have it); and that is
24 that it is now our understanding that this Panel,
25 this Transport Committee, Railway Transport Committee,
26 does not accept any obligation of the previous
27
28
29
30



1 Transport Committee.

2 Is that true, sir?

3 THE CHAIRMAN: That I think I made
4 very clear this morning that we do not.

5 MR. CONEN: So you are today, the
6 Railway Transport Committee to us as we have explained
7 to all our neighbours and all of our children but
8 yesterday the Transport Committee now is no longer?

9 THE CHAIRMAN: I am probably breaking
10 the rules but I think that the members of the public --
11 perhaps I can bend the rules a little bit to explain
12 to this extent; that the legal position -- well --
13 well maybe I better go back a little bit further and
14 say that when a panel, such as the one we are sitting
15 on, is sitting hearing an application such as this,
16 you know, we don't have really a great deal of
17 freedom as to what we can do and what we can't do.

18 First of all we are governed by the
19 Statute under which we are appointed and we are
20 governed by the Railway Act and the National
21 Transportation Act. We are governed by a great body
22 of rules called the Common Law and when we are in
23 Quebec we are governed by another body of rules called
24 the Civil Law, and every time we do something in
25 contravention of any of those rules the parties that
26 are before us that are harmed by that can take us to
27
28
29
30



1 court and if that happens and the court says you were
2 wrong, you shouldn't have done it that, go on back
3 and put those people through the hoops all over
4 again. So we don't have complete freedom and many
5 of the things that may look peculiar to members of
6 the public who aren't aware of all of these
7 parameters in which we must operate -- to them what
8 we are doing may look somewhat strange, but most of
9 the time I hope that what we do can be explained by
10 the rules that we are bound by.
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PC/ko

1 If we had complete freedom perhaps we would not do
2 things the way we do, but in the long run you might
3 as well do things right the first time because then
4 you do not get into court and you do not get a great
5 big dragged out procedure and everybody gets a
6 reasonable chance to be heard.

7
8 Now, that is a terrible big, long
9 lecture and it is probably an oversimplification
10 but I hope it goes some way to explain we are not
11 free agents when we sit up here. We have to obey
12 the rules. And we are dealing with a new application.
13 We have made that ruling and the previous application
14 is something I suspect counsel here will be fighting
15 over in the courts for maybe quite a long time, but
16 that is a separate thing and we are starting out
17 fresh.

18
19 MR. CONEN: Okay. We also are
20 bound and do not have freedoms as has been discussed.
21 In fact some of our freedoms are being invaded and
22 that is the reason some of us are here.

23
24 THE CHAIRMAN: I do not want to
25 interrupt you and spoil your train of thought, but
26 the fact that you are very concerned about your rights
27 that we are here to hear you and we do with great
28 interest.

29
30 MR. CONEN: Right.



1 Now we have again this new application
2 and again it was said this morning -- I'm not sure if
3 that was final or not but reference was made to the
4 previous hearing and the two thousand or three
5 thousand pages of transcript and I think it was asked
6 by the Chair if people wanted that entered and I do
7 not know what the lawyers position would be but words
8 would not capture what went on in the previous hearing
9 It cannot capture any emotion. It cannot capture
10 people's feelings. It cannot capture the effect on
11 their daily lives and cannot answer our children's
12 questions that still are being asked of me: Daddy,
13 what is the armed guard doing there?
14

15 THE CHAIRMAN: Well, Mr. Conen, I
16 think what I said this morning, and if I do not repeat
17 it correctly the transcript speaks for itself, I
18 think what I said this morning was with the consent
19 of everyone, if someone did not want to incur the
20 expense of giving their evidence over again, with the
21 consent of everyone, we might consider listening to
22 the transcript, but I must say on the general tenor
23 of your observations I agree with you. There is no
24 substitute for hearing the people firsthand.
25

26 MR. CONEN: So the only resolution
27 for us, the only alternative left is that we must re-
28 do everything. As you say, it is in your application
29
30



1 so whatever has happened in the previous two to three
2 years then is for naught and we must start over. We
3 think that is very unfair.

4 THE CHAIRMAN: That might be an over-
5 simplification again sir and I was not saying there
6 was no chance of using parts of the transcript of the
7 earlier hearing. All I was saying was it would have
8 to be by the consent of everyone.
9

10 MR. CONEN: Thank you.

11 THE CHAIRMAN: Thank you.

12 Are there any other members of the
13 public who would like to make representations at
14 this time?
15

16 I see no more so I think we now turn
17 to Respondents' counsel.

18 MR. FISHER: Mr. Chairman, over the
19 period of adjournment I had an opportunity of
20 reviewing the judgment and the Reasons that were
21 delivered earlier this morning, and I do have
22 instructions from my client, but before I get into
23 that, there is a few points which I would like to
24 raise arising out of the judgment which might alter
25 my position.
26

27 Now, I am referring particularly to
28 your comments at the bottom of page 212 of the
29 transcript beginning at the last line: "... it must
30



1 at the same time ...", this is referring to your
2 Panel:

3 "... it must at the same time register
4 certain elements of concern with the
5 state or condition of the Applicant's
6 Application. A condition which the
7 Panel feels may require certain
8 measures to be taken if the Interveners
9 and public interest witnesses are to
10 be given (and the next word is very
11 important) a fair hearing."

12 And you go on to say in the next
13 paragraph:

14
15
16 "The Application itself, how-
17 ever, does not give the Interveners
18 any advance warning of the position
19 the Applicants will take on the many
20 questions that are of utmost
21 importance to them."

22 And then at the bottom of page 214,
23 the last line reads; or, perhaps I had better back-
24 track a bit and read the last paragraph:

25
26 "Had the Applicant done this
27 in the first instance, (in other words
28 prepared a proper Application) the
29 public and the Interveners would have
30



1 had adequate information on which to
2 decide whether to support or oppose
3 and the necessary information to
4 adequately prepare their opposition."
5 You further comment on page 215 --

6 THE CHAIRMAN: If I could interrupt
7 just for a moment. Did you use the expression "proper
8 application"?

9
10 MR. FISHER: That is my term. That
11 is not yours.

12 THE CHAIRMAN: Yes. I just wanted to
13 make the point, I wasn't suggesting there was anything
14 illegal about the application.

15 MR. FISHER: No.

16 THE CHAIRMAN: But that it would have
17 been pleasant if it had more facts.

18 MR. FISHER: Yes. Well, that's ---

19 THE CHAIRMAN: Go ahead.

20 MR. FISHER: Well, I am sorry. I do
21 not quarrel too much with that. You are quite correct.
22 That was my terminology.

23
24 Turning then to page 215, the second
25 full paragraph you indicate:

26
27 "Following the hearing of the
28 Applicant's evidence the Panel is
29 prepared to adjourn the hearing not
30



1 indefinitely or for any of the reasons
2 advanced by the movers of the motions
3 just dismissed, but to allow interested
4 parties (and this is the most important
5 part possibly) and the Panel to review
6 the Applicant's proposal and for the
7 interested parties to assess their
8 positions and prepare for cross-
9 examination and for presentation of
10 their own views."

11
12 And then the last portion is on page
13 216 at the end of the first full paragraph you
14 indicate:

15
16 "In any case we will now hear your
17 comments on the proposal before making
18 a final decision on the procedure to
19 be followed."

20 Now, here is my point: when you were
21 speaking to Mr. Morris, who is affectionately known
22 by a different name possibly to the people, you gave
23 to him your assurance that you would ask certain
24 questions.
25

26 Now, with all respect to you sir, that
27 points out to me at least your concern and your
28 proper concern that all the facts in this Application
29 be made known to the Panel.
30



1 Now you see it is only because Mr.
2 Morris came to this microphone and said certain
3 things to you, it was made aware to you that you
4 ought to ask those questions.

5 THE CHAIRMAN: Well, Mr. Fisher, at
6 all of the hearings I have attended as a member of
7 the panel and as a Chairman of a panel I try to go
8 through the evidence and ask all the questions I can
9 possibly think of.

11 MR. FISHER: Well, I'm sure you do.

12 THE CHAIRMAN: That have a bearing
13 on the matter and it is difficult to decide what
14 questions -- it is difficult to prepare ahead of
15 time and I think that was the point I was making,
16 if you do not know some ---

18 MR. FISHER: No, I meant that, sir,
19 as an indication of my feeling that if, as and when,
20 this matter might go on, I am confident that whoever
21 hears it, and again I cannot emphasize strongly enough
22 if it goes on, will do so with a view to obtaining
23 a thorough understanding of the facts.

25 You see, just as it is important to
26 the Interveners, Respondents and other people to
27 prepare, surely sir it is also very important for
28 the Panel to prepare.

29 Now, you have a tremendously skilled
30



1 and able staff at your disposal. I do not believe it
2 is possible, with all respect, to proceed now, have
3 Mr. Chalmers call a witness, let me say an architect,
4 to talk about a bridge, an overpass, an underpass,
5 whatever, and you have no opportunity of considering
6 it, your staff will be of no input to you, how fairly
7 sir can you ask any questions. You have indicated
8 that you endeavour to do so. Your response to Mr.
9 Morris certainly indicates that to me. When someone
10 steps in that box and goes on with a tremendously
11 complicated proposal and so on, what preparation have
12 you had sir to assess that evidence, to ask questions
13 relating to it?
14
15

16 THE CHAIRMAN: Mr. Fisher, may I
17 answer your observation? The proposal that we made
18 this morning was that the evidence of that architect
19 would be given now. We would then adjourn until the
20 new year and we would have from now until the new year
21 to study the transcript, to look at the plans and
22 specifications as will you and other counsel and
23 members of the public and a whole month to prepare
24 for those very vital questions that we might wish to
25 ask. Perhaps you did not understand.
26

27 MR. FISHER: I did understand clearly
28 sir, but I am suggesting this to you, as any lawyer
29 has, I am sure, become involved in a situation where
30



1 evidence is given piecemeal, and that is really what
2 we are suggesting here, it has never worked in my
3 experience to satisfaction. The witness takes the
4 stand, goes through the evidence uninterrupted and
5 so on, goes away, comes back and then endeavours to
6 be cross-examined and to make sense out of what
7 happened. There is no substitute at all for having
8 a witness called. Everyone knows what the witness
9 is going to say or at least what evidence is going to
10 be led. People can intelligently listen to the
11 evidence and so on. Evidence cannot be given in a
12 vacuum.
13
14

15 Now I am suggesting this to you: I
16 have received instructions from the City. However,
17 before I am called upon to make a judgment or to
18 report on that matter I would like the Panel to
19 consider the following proposal, bearing in mind
20 what you have said this morning that the Application --
21 bearing in mind that the Application is in such a
22 state that it required comment by you. Surely the
23 proper procedure to be followed is if this Committee has
24 seen fit to grant an application to hear a new
25 application let them submit a proper application.
26
27 How can it be they can come here with a faulty (that
28 is my word), with a faulty application, a deficient
29 application what is bereft of any real subsequence
30



1 whatever and indeed, as my friend Mr. Paroian pointed
2 out, which is insulting and then be permitted to
3 proceed. It is a remarkable proposition indeed.

4 I would not like anything I have said
5 to be misconstrued as my returning to the jurisdiction
6 of the Committee to hear such an application, nor
7 would I like it to be interpreted as me suggesting
8 that is the proposal, the procedure rather, that the
9 Committee ought to follow. I am simply saying that
10 in my view there ought to be no application whatsoever
11 entertained by the Committee. However, if the
12 Committee feels differently and wishes to entertain
13 the application then surely at least it should be a
14 proper application. I accordingly suggest that
15 Canadian Pacific be directed to make a proper
16 application and either dismiss the one before you
17 at this point in time or at least grant leave to
18 Canadian Pacific to amend properly in accordance
19 with the questions you have raised then you may
20 resume here in January or whatever other scheduling
21 is appropriate. In the meantime I can advise the
22 Respondents and the Interveners could take such steps
23 as they feel are appropriate. That would surely be
24 the most fair way of handling the matter from
25 everyone's point of view. It would give the Panel
26 a reasonable advance notice of what is the nature of
27
28
29
30



1 the application. It would permit the Respondents to
2 sit and assess -- or I shouldn't say sit -- it would
3 permit them to sit back and reflect for a moment
4 rather than over the heated period of one lunch
5 hour to decide what they were going to do and I
6 suppose we ought not to approach this from the point
7 of view that Canadian Pacific has no rights at all.
8 We at least enable them to put their application into
9 some meaningful kind of shape.
10

11 I suggest that is what we ought to do.
12 I think that is fair to the parties. It permits the
13 Respondents and I cannot emphasize strongly enough,
14 I do not want to be accused of sharp practice, but I
15 am suggesting that if the matter is adjourned now to
16 January or so it would permit we as Respondents to
17 assess our situation. It would permit the Panel to
18 know what kind of application is being made and it
19 would permit Canadian Pacific to make a sensible
20 application and not an insulting one which, as I
21 understand you sir have indicated yourself, it is
22 in such a state that it required comment.
23

24 THE CHAIRMAN: I do not think Mr.
25 Fisher I would use many of your adjectives.
26

27 MR. FISHER: No, I agree, some of them
28 are mine.
29

30 MR. PAROIAN: Sir, let me read from



1 your transcript, page 213. You say (so that I do
2 not use any of my adjectives) starting at the bottom
3 of page 215 -- 212, I'm sorry, the last paragraph:

4 "While the Panel has dismissed
5 the motion for adjournment and the
6 motion that it should disqualify itself
7 or step down because of alleged real
8 or subconscious bias, it must at the
9 same time register certain elements of
10 concern with the state or condition
11 of the Applicant's Application. A
12 condition which the Panel feels may
13 require certain measures to be taken
14 if the Interveners and public interest
15 witnesses are to be given a fair
16 hearing.

17 "As we suggested earlier,
18 (you continue) this is a new
19 Application. The Application itself,
20 however, does not give the Interveners
21 any advance warning of the position
22 the Applicants will take on the
23 many questions that are of utmost
24 importance to them."



EE--1 1 "For example, they do not know whether
NGeg 2 the Applicant proposes to use the
3 siding 24 hours per day or only part
4 of the day or whether the locomotive
5 engines will be kept idling or will
6 be shut off, assuming that the
7 Applicant is successful in the first
8 place. The Applicant has proposed
9 a number of choices for continuation
10 of the pedestrian crossing but no one,
11 including the Commission, has seen the
12 plans or specifications so as to
13 develop a position to support or
14 oppose one or more of the plans.
15
16
17 "At the moment, the pedestrian crossing
18 is in use with pedestrians using the
19 crossing subject to the usual risks
20 involved in a level crossing.
21
22 "Some members of the public ..."
23 you say
24 "... not here represented ...".
25 Some members of the public, I repeat,
26 not here represented,
27 "... might well favour the Powell
28 Sidings with an overpass over a
29 situation where there is no overpass
30



EE-2

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and no sidings. In other words,
no one yet knows the actual case they
have to make. The panel considers
it unfortunate that the Applicant has
not seen fit to file a more complete
and detailed application setting out
in reasonable detail why it considers
it must operate the sidings, how it
proposes to operate the sidings and
the measures it proposes to take to
make the pedestrian crossing safe.
"Had the Applicant done this in the
first instance, the public and the
interveners would have had adequate
information on which to decide
whether to support or oppose and the
necessary information to adequately
prepare their opposition. Furthermore,
the provision of details of the
Applicant's case would have allowed
better preparation for cross-
examination.
"Bearing the above observations in
mind the panel proposes that the
Applicant put in immediately its
evidence in chief, including full



EE-3

1 information concerning the alternative
2 types of pedestrian crossings it
3 proposes. The Committee suggests
4 that no cross-examination take place
5 at this time so as to facilitate the
6 taking of evidence and the completion
7 of the Applicant's evidence in chief."
8

9 Those are your exact words as I have
10 best been able to read them from the transcript. I
11 am going to ask for an adjournment again for the
12 purposes of allowing me on behalf of my client
13 Robert Girard, to bring such application or such
14 prerogative remedy as we might deem advisable to
15 challenge the jurisdiction of this panel and to
16 challenge the decisions of this panel made today in
17 order that the rights of these people will be able to
18 be determined by a Court of Law as you have invited
19 us, sir, to do.
20
21

22 Your own words in your own judgment
23 indicate that to proceed today is premature. Because
24 you have indicated, and I will use your own words
25 again -
26

27 "A condition which the panel feels
28 may require certain measures to be
29 taken if the interveners and public
30 interest witnesses are to be given a



fair hearing."

EE-4

An adjournment in view of those circumstances for the purposes of permitting these people to have their rights determined by a Court of Law, as you have invited them to do, is appropriate. To do otherwise is to deny them the rights of natural justice.

You will recall that the argument raised the fact of your jurisdiction, the arguments raised as well and put in issue the question of lives. And while I do not wish to argue the case any further, the Wardair case with the greatest of respect can be distinguished on those bases. But going beyond that to the practical result of granting an adjournment for the purposes of bringing on such a motion, and I say that we will bring on the motion at your invitation or at your suggestion, as an alternative for us to consider; and with the greatest of respect to the Committee for its decision. The practical effect will be the same. You are going to adjourn in any event from your proposal. How do you lose anything and how is this CPR in any way prejudiced to adjourn to permit us to take this matter to Court and there have your ruling tested. How is anyone prejudiced?

In the meantime CPR can make whatever



EE-5

1 application it wishes or amend its present
2 application consistent with the proposal that you
3 have set out on pages 213, 214, 215 and 216 of
4 today's transcript. How now can anyone be prejudiced
5 except the people? To strangle their legal
6 remedies now, after you have said that certain
7 measures must be taken if the interveners, and I am
8 quoting: "...and public interest witnesses are to
9 be given a fair hearing". In view of that
10 statement and in view of your indication that you
11 want to give a fair hearing, how can you now refuse
12 to grant an adjournment to permit their rights to
13 be determined? To do otherwise of its own is a
14 breach of the rules of natural justice.

15
16
17 Those are my submissions Mr. Chairman
18 and gentlemen of the Board, the Committee. After
19 you have ruled I may have some other comments.

20 MR. FISHER: Now Mr. Chairman --

21 MR. PAROIAN: By that I may have some
22 other comments as to what I propose to do.

23
24 MR. FISHER: I am stepping out of
25 order, would you bear with me, please. I think it
26 is only fair to my friend Mr. Chalmers that I
27 clarify something which I failed to say. And that
28 is that I agree with the observations made by Mr.
29 Paroian, I think they are totally appropriate.
30



EE-6

1 I would like to have your views on
2 the arguments advanced by myself and Mr. Paroian
3 before I am called upon to indicate what I shall do
4 or in considering, very frankly, in the event
5 that an adjournment is not granted. But I am very,
6 very strenuously requesting an adjournment. If the
7 matter is not adjourned then I too will have further
8 observations to make.
9

10 THE CHAIRMAN: Mr. Chalmers?

11 MR. CHALMERS: May I please mention
12 that Canadian Pacific opposes the adjournment. My
13 submission is that with the greatest deference you,
14 sir, and colleagues, have made^a/very considerable
15 gift to the objectors which they choose to spurn.
16

17 You have ordered us, ordered Canadian
18 Pacific to adduce all its evidence in chief without
19 cross-examination, so that the objectors can get
20 their transcript and study it with the exhibits and
21 study it with care for a month and come back and
22 cross-examine Canadian Pacific witnesses, and lead
23 their evidence knowing not only what our case is
24 in terms of the usual pleadings in a Court or
25 Tribunal, but knowing all of what our evidence is
26 without having given us any pleading or any indication
27 of what theirs is.
28

29 This is, with great respect, this is
30



NE-7

1 something to which we could have taken exception in.
2 my submission, but did not. My submission would
3 be and will be, if this comes to argument in another
4 Tribunal, that the application of Canadian Pacific
5 was a proper application, was what is required.
6

7 It is four or five pages long, it
8 deals with the basic essential matters which
9 Canadian Pacific would propose to cover in evidence.
10 And I would like to, in accordance with your
11 ruling, sir, get on notwithstanding the disadvantage
12 that I am shouldering in doing that, of exposing the
13 witnesses to carefully studied cross-examination
14 on every word of their evidence.
15

16 Notwithstanding that I would like to
17 get on and have specifically the plans which you,
18 sir, asked for filed. The architect or the man who
19 drew them will be here in due time, and then get on
20 with the witnesses as to the commercial and
21 economic necessity or importance of railroading
22 through the Detroit/Windsor gateway and to the
23 witnesses as to the manner in which the sidings
24 will work, and how they will work and why they
25 have to be, in the submission of Canadian Pacific,
26 located where they are.
27

28 The sort of issue that my friends
29 and the Commission have rightly and properly raised,
30



EE-8

1 obviously they are very real concerns of people in
2 this room that you gentlemen have to weigh against
3 this evidence. And you will, next January, if you
4 proceed as you plan you will hear about that. But
5 you will hear about it in the way that you have
6 outlined, in my submission you will hear about it
7 in the most informed possible way, the cross-
8 examination will be the most informed possible
9 cross-examination.
10

11 In my submission you have, and
12 perhaps that's right in all the circumstances of
13 this case, made life extremely difficult for
14 Canadian Pacific. It will be difficult to present
15 this case but we accept that burden. We accept
16 that and in my submission my learned friends if
17 they are serious are throwing aside the great
18 advantage which you have given them. There is no
19 way, in my submission that anyone is going to be
20 able to demonstrate that you proceed in any non-
21 judicial way. It may be that Canadian Pacific could
22 but we do not intend to. We intend to defend your
23 jurisdiction. But in my view we have the short end
24 of your ruling, we are not complaining, we are not
25 asking for an adjournment. We are asking you to go
26 on and let us adduce in chief only without
27 interruption. The evidence of Canadian Pacific
28
29
30



EE-9

1 witnesses will all be laid out for you, sir, and
2 for my learned friends and for the dozen or so
3 brave people who come up and speak their minds
4 from time to time.

5 And we would like to go on and do that.

6 MR. FISHER: May I just speak in
7 reply?
8

9 THE CHAIRMAN: I want to be very
10 careful and give the Doctor a chance this time.

11 DR. HENDERSON: Sir, I just heard
12 Mr. Chalmers say that you have given the interveners
13 and the lawyers in this case representing the
14 citizens, a great advantage in this case and I
15 did not hear you challenge that.
16

17 Do you not feel that that remark
18 should be challenged?

19 THE CHAIRMAN: Doctor, he is entitled
20 to express his opinion to us.

21 DR. HENDERSON: Sir, one of our
22 lawyers attempted to express his opinion this
23 morning to you and you castigated him severely.
24

25 Now Mr. Chalmers has implied that
26 you have given a great advantage to the people that
27 are opposing this application. And I think you
28 should challenge that statement equally as
29 vigorously as you challenged the statement this
30



EE-10

1 morning. Now this is just my opinion, I am not a
2 lawyer.

3
4 THE CHAIRMAN: Thank you, Doctor.

5 MR. FISHER: Just in reply, Mr.

6 Chairman, I would like to say this: that bearing in
7 mind the two statements made by yourself, namely
8 "The application itself however does not give the
9 interveners any advance warning of the position the
10 Applicants would take and the many questions that
11 are of utmost interest to them." And further on,
12

13 "In other words, no one yet knows

14 the actual case they have to meet".

15 And once more you talk about being adequately able
16 to prepare the opposition.

17 Now I put this to you in case there
18 is any misunderstanding of my position. I
19 respectfully do not agree, sir, that you ought to
20 proceed at this point in time with any kind of
21 application at all. However, even if you do see
22 fit to do that, what you have ordered this morning
23 you are going to do, and without prejudice to any
24 other rights that I might have, I request that the
25 matter go over to fulfill those very basic require-
26 ments which you have outlined.
27

28
29 After all, how can I get instructions
30 from my client if, in your own words, we do not know



EE-11

1 what the case is, we do not know what we have to
2 meet and we cannot adequately prepare.

3
4 THE CHAIRMAN: Well we adjourned to
5 discuss the matter of procedure. This is a
6 proposal, it was not a ruling, we still have not
7 decided what we are going to do.

8 MR. FISHER: I am glad to hear that
9 we are discussing a proposal. I can assure you
10 that what my friend Mr. Paroian said, if it goes
11 over to January no one except the respondents and
12 the interveners will be prejudiced, no one.

13
14 So again I am very concerned about
15 being accused of sharp practices, Mr. Chairman.
16 I hope I have made myself very clear on that. The
17 comments I have made concerning proceeding with the
18 application and so on, I trust will be received
19 with full knowledge that I am not suggesting that
20 this is the way it ought to be done, if that's what
21 you are going to do you should do it this way.
22 But I do not agree with your right to do it that
23 way.
24

25
26 THE CHAIRMAN: Thank you. Any other
27 observations? I think we will adjourn to consider
28 this new proposition.

29 SHORT RECESS. - - -
30



FF-1

1 --- ON RESUMING.

2 THE HEARING PROCESS OFFICER: Order,
3 please. Order, please.

4 THE CHAIRMAN: The Panel has
5 considered all of the representations and arguments
6 presented to it.

7
8 We fail to see how the proposal
9 contained in our Decision this morning prejudices
10 in any way the interveners or interested members of
11 the public.

12 The proposal made by Messrs Paroian
13 and Fisher could result in their clients and the
14 general public obtaining less information and less
15 detail than would result from the Panel's proposal
16 made this morning.

17
18 Under the Panel's proposal the
19 parties opposing the Applicant's case will have all
20 the facts to consider. The other proposal would,
21 at best, give them only a summary.

22
23 The Panel will therefore hear
24 evidence commencing tomorrow morning. We hope the
25 evidence can be completed this week after which the
26 hearing will be adjourned until the New Year.

27 Now, Mr. Fisher, I believe that you
28 said that you wished to make some representations
29 following our decision.
30



FF-2

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MR. CHALMERS: With my friend's permission it is a practical point. It's just a matter as to how you are going to proceed.

I wonder if I could simply say to the Commission -- starting tomorrow morning -- I am not completely confident -- we will use our very best endeavours but I am not completely confident that I can put in all Canadian Pacific's case in chief in the three days. We will certainly try.

THE CHAIRMAN: Well I think the Panel used the expression "we hope".

MR. CHALMERS: I will try to see it is realized but I had better say now that I simply cannot guarantee that.

MR. PAROIAN: My friend has deferred to me.

Mr. Chairman, in view of the circumstances, in view of my instructions, with the greatest of respect to this Committee I propose to take your rulings and the other rulings to the Courts and accordingly will withdraw from these proceedings at this time.

MR. FISHER: I am of the same view as Mr. Paroian. I accordingly will not be participating in the hearing which you have said will commence tomorrow morning and with your leave I will withdraw at this time.



FF-3

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THE CHAIRMAN: You have my leave.

You have the Panel's leave.

Now we will adjourn until 10 o'clock
tomorrow morning.

--- Whereupon the Hearing adjourned until Wednesday,
the 30th day of November, 1977 at 10:00 a.m.

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